

ALYSON A. ALLISON
JAMES N. ALLISON III

IBLA 83-74

Decided April 29, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring oil and gas lease M 40025 (Acq.) terminated by operation of law for failure to pay annual rental.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals --Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

2. Administrative Authority: Laches--Estoppel--Laches

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

APPEARANCES: Fred M. "Mickey" Jones, Esq., Odessa, Texas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Alyson Ann Allison and James N. Allison III appeal from the decision of the Montana State Office, Bureau of Land Management (BLM), which declared

oil and gas lease M 40025 (Acq.) terminated by operation of law for failure to pay the annual rental on or before the anniversary date of the lease, May 1, 1982.

Effective May 1, 1978, the Montana State Office, BLM, issued oil and gas lease M 40025 (Acq.) to James N. Allison, Jr., for 496.21 acres. Allison had filed a simultaneous noncompetitive oil and gas lease offer which was drawn with first priority for parcel MT 610 in the February 1978 drawing.

On November 10, 1981, appellants submitted for the approval of BLM an "Assignment Affecting Record Title To Oil and Gas Lease," which indicated that the Estate of James N. Allison, Jr., assigned its record title interest in oil and gas lease M 40025 (Acq.) to appellants on August 10, 1981. On July 14, 1982, BLM responded to the above-mentioned request with a notice to appellants which stated in part: "The assignment is returned to the assignee unapproved because the lease terminated May 1, 1982."

By letter dated July 30, 1982, and received and date stamped by BLM on August 9, 1982, appellants tendered the \$497 rental due on the lease. BLM advised appellants by letter dated September 10, 1982, that the applicable regulation offered no provision for considering reinstatement of a lease unless the rental payment was received within 20 days after the termination date, in appellants' case within 20 days of May 1, 1982. BLM authorized the refund of appellants' payment of \$497.

Appellants have appealed the termination of the lease and BLM's failure to approve the assignment, stating:

(1) Excessive delay by the Bureau of Land Management in processing the assignment caused confusion as to responsibility for the payment of delay rentals; and

(2) Failure of the Bureau of Land Management to advise Lessee of the lease's termination and the regulations regarding reinstatement prevented Applicants from saving the lease.

Finally, appellants request that the lease be reinstated and the assignment approved.

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1976), provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. This Department has no authority under the reinstatement provision of 30 U.S.C. § 188(c) (1976) to reinstate an oil and gas lease that has terminated by operation of law unless payment of the required amount is received within 20 days after the date of termination.

The regulation referenced by BLM, 43 CFR 3108.2-1(c), reads:

(c) Reinstatement. (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which

has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, and (iii) a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the appropriate office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination will be sent by certified mail, return receipt requested.

Appellants' argument that BLM should have informed them of the termination of the lease is without merit. Under the statute, BLM may consider reinstating a terminated lease only when the rental due was paid or tendered within 20 days of its anniversary date, in this case, May 1, 1982. The Notice of Termination is intended to toll the 15-day period for submission of a petition for reinstatement where reinstatement is within the authority of the Secretary. Such notice is only sent therefore, if the lessee has met the requirements of 30 U.S.C. § 188(c) (1976), and has tendered rental within 20 days of the anniversary date of the lease. C. J. Iverson, 21 IBLA 312, 82 I.D. 386 (1975); Amoco Production Co., 16 IBLA 215, 219 (1974). Since BLM did not receive appellants' rental until August 9, 1982, over 3 months after the anniversary date, BLM had no authority to reinstate the terminated lease pursuant to 30 U.S.C. § 188(c) (1976). Sun Oil Co., 63 IBLA 26 (1982); Jean Szczepanski, 60 IBLA 375 (1981); Jack J. Grynberg, 53 IBLA 165 (1981).

[2] While the delay in processing appellants' request for approval of assignment was regrettable, it is well established that the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties. 43 CFR 1810.3(a); Otay Mining Co., 62 IBLA 166 (1982). Pending approval of the assignment, the lessee of record (or, in this case, his estate) is responsible for making timely rental payments and the fact that an unapproved assignment has been filed will not justify a failure to pay the rental timely. See Auburn C. Hunsucker, 34 IBLA 316 (1978); Leonard A. J. Tancredi, 32 IBLA 325 (1977). It should be noted that nothing precluded appellants from paying the rental to protect their interest.

BLM's decision rejecting appellants' petition for reinstatement of oil and gas lease M 40025 (Acq.), filed pursuant to 30 U.S.C. § 188(c) (1976), must be affirmed. We note, however, that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, signed January 12, 1983, amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law where the rental was not

tendered within 20 days of termination if certain additional conditions are met. 1/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

C. Randall Grant, Jr.

Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge.

1/ Section 401 added the following new subsection (d)(2) to 30 U.S.C. § 188 (1976):

"(2) No lease shall be reinstated under paragraph (1) of this subsection unless --

"(A) with respect to any lease that terminated under subsection (b) of this section prior to Jan. 12, 1983 of the Federal Oil and Gas Royalty Management Act of 1982:

"(i) the lessee tendered rental prior to Jan. 12, 1983 of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

"(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

"(B) with respect to any lease that terminated under subsection (b) of this section on or after Jan. 12, 1983 of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

"(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

"(ii) fifteen months after termination of the lease."

The record disclosed that the Montana State Office, BLM, has sent a letter to the lessee's estate, with a copy to appellant's attorney, advising that a petition for reinstatement under the new statute together with back rental at the new rate must be filed with that office by May 12, 1983.

